

Federal Communications Commission

DA 99-312

Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of)
)
Amendment of Section 73.202(b),) MM Docket No. 98-134
Table of Allotments,) RM-9271
FM Broadcast Stations.)
(Sheridan, Wyoming and Colstrip, Montana)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: February 3, 1999;

Released: February 12, 1999

By the Chief, Allocations Branch:

1. At the request of Community Media, Inc., ("CMI"), licensee of Station KYTI(FM), Channel 243C3, Sheridan, Wyoming, the Commission has before it the Notice of Proposed Rule Making, 13 FCC Rcd 13472 (1998), proposing the substitution of Channel 229C for Channel 243C3 at Sheridan, and the modification of Station KYTI(FM)'s construction permit (File No. BPH-980211IE) accordingly.¹ To accommodate the upgrade, CMI also proposes the substitution of Channel 258A for Channel 229A at Colstrip, Montana, and the amendment of Brian M. Encke's ("Encke") application for a construction permit (File No. BPH-970731MK) to specify operation on Channel 258A, with cut-off protection. CMI filed comments in support of the proposal reaffirming its intention to apply for the channel, if allotted. No other comments were received.

2. As stated in the Notice, CMI is requesting the substitution of Channel 229C at Sheridan because of its proximity to co-owned Station KZWY(FM)'s frequency in Sheridan, Wyoming.² CMI further states that upgrading Station KYTI(FM) to Channel 229C would allow for diplexed operation of Stations KYTI(FM) and KZWY(FM). Diplexed operation necessitates

¹CMI seeks the amendment of its construction permit to modify Station KYTI(FM)'s transmitter site.

²Station KZWY(FM), Channel 235C1, is licensed to Lovcom, Inc. ("Lovcom"). Lovcom and Community Media, Inc. are co-owned by common principals. Lovcom currently has a pending application (File No. BPH-980217IF) seeking the modification of the Station KZWY(FM)'s facilities to specify, inter alia, a new transmitter site.

that Stations KYTI(FM) and KZWY(FM) frequencies be reasonably close. CMI asserts that diplexed operation of the stations will serve the public interest by allowing Lovcom and CMI to operate both stations using only one antenna, resulting in one less discrete source of radiofrequency radiation. Further, diplexed operation will alleviate some of the public's concerns related to environmental and aesthetic issues associated with multiple radio transmission facilities. Moreover, diplexed operation of Stations KYTI(FM) and KZWY(FM) will allow Lovcom and CMI to benefit from co-location of the stations, and will enable them to redirect savings resulting from the diplexed operation to better serve the public through additional community service programming.

3. We believe the public interest would be served by substituting Channel 229C for Channel 243C3 at Sheridan, Wyoming, since it would enable Station KYTI(FM), inter alia, to expand its service area. An engineering analysis has determined that Channel 229C can be allotted to Sheridan in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction at Station KYTI(FM)'s authorized construction permit site.³ Additionally, Channel 258A can be allotted at Colstrip at Encke's authorized construction permit site.⁴ In accordance with Section 1.420(g) of the Commission's Rules, we shall modify the construction permit of Station KYTI(FM) to specify operation on Channel 229C at Sheridan, Wyoming. In addition, we will allow Brian M. Encke to amend his construction permit to specify operation on Channel 258A in lieu of Channel 229A at Colstrip, Montana, with cut-off protection.

4. Although Commission policy requires reimbursement for the reasonable costs associated with a change in frequency of an existing authorization, applicants are not affected by our reimbursement policy. However, on February 5, 1999, a construction permit was issued to cover Encke's application for Channel 229A at Colstrip, Montana. Therefore, CMI is required to reimburse Encke for reasonable costs incurred in changing to Channel 258A. See Circleville and Columbus, Ohio, 8 FCC 2d 159 (1967). As requested in the Notice, CMI has stated its willingness to do so, in the event a construction permit was issued before finalization of this proceeding.

5. Accordingly, pursuant to the authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective March 29, 1999, the FM Table of Allotments, Section 73.202(b) of the Commission's

³The coordinates for Channel 229C at Sheridan are 44-37-20 North Latitude and 107-06-57 West Longitude.

⁴The coordinates for Channel 258A at Colstrip are 45-53-42 North Latitude and 106-36-38 West Longitude.

Rules, IS AMENDED, with respect to the communities listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>
Sheridan, Wyoming	229C, 235C1, ⁵
Colstrip, Montana	258A

6. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, the authorization of Community Media, Inc. for Station KYTI(FM), Sheridan, Wyoming, IS MODIFIED to specify operation on Channel 229C in lieu of Channel 243C3, subject to the following conditions:

- (a) Within 90 days of the effective date of this Order, Community Media, Inc., shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility.
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.
- (c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

7. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, **if the request is granted**, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Community Media, Inc. is required to submit a rule making fee in addition to the fee required for the application to effect the upgrade for Station KYTI(FM) at Sheridan, Wyoming.

8. IT IS FURTHER ORDERED, That the Secretary SHALL SEND a copy of this Report and Order, by CERTIFIED MAIL, RETURN RECEIPT REQUESTED, to the following permittee:

⁵A "one-step" upgrade application filed by Lovcom is pending requesting the substitution of Channel 235C for Channel 235C1 at Sheridan, Wyoming.

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